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Formerly it was the established rule that papers unlawfully seized by an official of the United States, without a search warrant, could not be retained by the federal government to be used in evidence, when a seasonable application for their return was made before trial. *Weeks v. United States*, *supra*. This rule of practice requiring objection to the admission in a criminal case of evidence illegally acquired to be made before trial is now held inapplicable where the defendant first learns of the government's possession of his document when it is offered against him on trial. *Gouled v. United States*, 255 U. S. 298, 41 Sup. Ct. 261 (1921).

"The essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the court but that it shall not be used at all." *Silverthorne Lumber Co. v. United States*, 251 U. S. 385, 40 Sup. Ct. 182 (1920). But property lawfully seized under a valid search warrant may be used in the prosecution of a suspected person for a crime other than that described in the affidavit on which the search warrant is issued. *Gouled v. United States*, *supra*. And before it can be held that a waiver of Constitutional protection against unreasonable searches and seizures has been made, the court should be able to find that the intention of waiver is sustained by clear and positive testimony. *United States v. Lydecker*, 275 Fed. 976 (1921).

For an exhaustive note on the admissibility of evidence wrongfully obtained, see 136 Am. St. Rep. 135. For further discussion of the doctrine, see 1 VA. LAW REV. 70; 4 VA. LAW REV. 59.

MONOPOLIES—COMBINATIONS IN RESTRAINT OF TRADE.—Defendants, who were competitors and manufacturers of one-third of the hardwood lumber produced in this country organized themselves into an unincorporated association called the "Open Competition Plan". The purpose of the Plan was the dissemination of detailed knowledge by the members to each other of their business so as to establish "cooperative competition, not cutthroat competition"; and thus by information about prices, production, etc., to tend toward a harmony with the general market conditions. The Plan provided for a manager of statistics to whom each member sent a daily report of all sales actually made, with name and address of purchaser, kind and grade of lumber sold and all special agreements of every kind; a daily shipping report, etc.; a monthly production report, showing the production of the member reporting during the previous month with the grades and thicknesses classified as prescribed in the Plan; a monthly stock report, showing the exact nature of the stock on hand, etc.; and monthly price lists, showing prices f. o. b. shipping point, and new prices were filed with the Association as soon as made. Inspection reports were also made by a chief inspector appointed by the Association. It was also provided that the secretary of the Association should then send to each member a monthly summary, showing the production of each member for the previous month, subdivided as to grade, kind, thickness, etc.; a weekly report of all sales, giving each sale and price and name of purchaser; a monthly report of stock on hand; a summary of the stock, green and dry, sold and unsold; not later than the tenth of each month a summary of the price lists furnished by the members, showing the prices asked by each, and any changes therein were immediately trans-

mitted to the members; a market report letter, pointing "out changes in conditions both in producing and consuming sections, giving a comparison of production and sales; and, in general, an analysis of the market conditions". It was also provided that monthly meetings be held at points to be agreed upon by the members, at which meetings subjects of interest were to be discussed. It was further provided that the Southwest territory should be divided into four districts, and instead of the monthly meetings provided for, meetings were actually held about once a week for nearly a year. Before each meeting a questionnaire was sent to each member, from the answers of which, the statistician compiled an estimate of the condition of the market, actual and prospective, which was given or sent to all the members. The Plan also provided for a monthly "market report letter" to go to all members of the Association, which letter contained a forecast of the market, which was discussed at all the meetings but two. It was also shown that it was one of the prime purposes of the meetings to induce members to cooperate in restricting production, thereby keeping the supply low and prices high. The intention was also manifest to create the general conviction that higher and higher prices were obtainable, and disposition on the part of all to demand them. It was also shown that during that year the prices of hardwood lumber were greatly increased. The United States brought suit to enjoin defendants from carrying out this Plan as being a combination in restraint of trade and violative of Section 1 of the Sherman Anti-Trust Act. *Held*, injunction granted. *American Column & Lumber Co. v. United States*, 42 Sup. Ct. 114 (1921).

This is the first time the legality of such a plan has been before the United States Supreme Court and three Justices dissented.

For a discussion of the present status of the law relating to legitimate trade associations and the extent that they may engage in legitimate co-operative activities without actually restraining trade or otherwise violating the Sherman Act see the correspondence between the Attorney General and the Secretary of Commerce relative to activities of trade associations, which was made public February 16, 1922.

REAL PROPERTY—CEMETERIES—EXPRESSION OF PURPOSE FOR WHICH LAND CONVEYED IS NOT A CONDITION.—The owners of a certain piece of land conveyed it to the inhabitants of a town. The descriptive clause of the deed to this property concluded with the following words: "The same being intended for a burying ground and for no other purpose." Shortly after acquiring this property, five persons were interred within its limits, but their graves cannot now be located. It was put to no further use by the town for 38 years, with the exception of a short period when a school house was situated upon it. The plaintiff, who is the record owner of all the adjacent property used the cemetery lot as a pasture in connection with his own, there being no fence inclosing the cemetery lot. The plaintiff brought an action of trespass *quare clausum fregit* to try the title to this lot, claiming to be the owner of the cemetery lot upon either of two grounds; viz., abandonment of the lot by the town, or upon title by adverse possession. The defendants, who were selectmen of the town, claim title in the inhabitants of the town. *Held*, plaintiff could not recover. *Phinney v. Gardner* (Me.), 115 Atl. 523 (1921).